IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6494 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAILESH C PATEL

Versus

PRINCIPAL CK PATEL TECHNICAL INSTITUTE

Appearance:

MR SHALIN N MEHTA for the Petitioner.

MR AJ PATEL for Respondent No. 1-2

MR JIVANLAL G SHAH for Respondent No. 2

MR PRAFUL J BHATT for Respondent No. 2

Mr.Joshi, Assistant GOVERNMENT PLEADER, for Respondent No. 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/06/2001

ORAL JUDGEMENT

1. By way of the present petition, the petitioner has challenged the order dated 4.12.1987, which is at

Annexure `E', passed by the Principal of the Technical Institution. It is mentioned in the said order that the petitioner was not eligible for appointment to the post in question and that his appointment was not approved by the Director of the Institution. Accordingly, the appointment of the petitioner was not continued on the ground that he was not qualified to be appointed, because he was over-aged. The said decision of terminating his services has been challenged in this petition.

2. During the pendency of this petition, the Commissioner, Employment and Training, Gandhinagar, has passed an order dated 9.6.2000, by which the services of the petitioner are absorbed in the cadre of Junior Clerk in the Grant-in-aid Industrial Training Institute at Pij, District : Kheda. Accordingly, now, the petitioner has already been absorbed in the cadre of Junior Clerk at the Industrial Training Institute at Pij.

3. It is argued on behalf of the petitioner that so far as the impugned decision, by which his services were terminated by the order at Annexure `E', is concerned, it is bad in law because once he was appointed, it should have been presumed that the authority concerned, who has power to relax the age limit, is deemed to have exercised that power and that it should be inferred that the appointing authority had relaxed the age limit in favour of the present petitioner. Mr.Shalin Mehta has relied upon the judgment of this Court in Ramgiri Keshavgiri Goswami v. K.M. Raval and others, 1985 G.L.H. 315. It has been held by this Court as under :-

> " ... ...
>
> It is quite obvious that the appointing authority knew that the petitioner had crossed the age-limit of 25 years by 14 days when he passed the test and by one year and 16 days when the appointment letter was sent. In view of the fact that the appointing authority has power to relax the age limit in appropriate cases, it would be fair and just to hold that the appointing authority had relaxed the age limit in favour of the petitioner particularly in view of the fact that he belongs to other Backward Class community enlisted in Baxi Commission report and that several candidates having failed, the eligible candidates may not be sufficient. It is not open to the respondents to urge

> that the question of age was inadvertently overlooked at the time of making appointment.
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> ... ...
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> The impugned order of termination of service of the petitioner is bad in law on another ground also, viz., that the respondents woke up to their so-called inadvertent mistake after more than two years. The petitioner had served for more than two years as Forest Guard before his services were sought to be terminated on the ground of over-age at the time of his appointment. Even if it was open to the respondents to rectify an error and terminate service reasonably soon after the appointment, it would be highly inequitable to allow them to do so after the lapse of more than two years.
>
> ... ... "

Considering the facts of the present case, I am of the opinion that once the petitioner was already appointed by the Authority, and when there is the power of relaxation available, there was no reason to pass the impugned order and in view of the decision of this Court, of which reference is made hereinabove, the order of termination at Annexure `E' is set aside. Since the petitioner has already been absorbed in another Institution, now, it is not necessary to pass any specific order of reinstatement, as the petitioner has already been absorbed in another Institution. However, for the intervening period between 1987 and 1992, the petitioner will not be entitled to any back wages and his services may be treated to have been continued for the said intervening period for seniority and other ancillary benefits except payment of back wages during the intervening period.

4. The order at Annexure `E' is quashed and set aside. It is held that the petitioner will be entitled to have benefit of seniority for the intervening period between 1987 and 1992, but he will not be entitled to any back wages for the aforesaid period. Since the petitioner has already been appointed in another Institution by the order dated 9.6.2000, no other specific order is required to be passed regarding reinstatement of the petitioner on the original

Institute.

The petition is accordingly allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent with no order as to costs.

28th June, 2001 (P.B. Majmudar, J.)

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(apj)